FAO No.1090 OF 1988

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

FAO No.1090 OF 1988

Date of Decision: 12-7-2006

Madhu Bala wife of Shri Jagdish Chander, resident of 5/20/3 Type-II State Ordinance Factory Ambajhari Defence Project, Nagpur.

.....Appellant

VERSUS

1.Haryana State through the State Transport Controller, Haryana, Chandigarh.

2.Haryana Roadways Kaithal Depot, Kaithal, through its General Manager.

3.Sham Sunder, Driver of Bus No.HRQ 4462, Kaithal Depot, Kaithal, District Kurukshetra.

.....Respondents.

CORAM:- HON'BLE MR.JUSTICE R S MADAN

PRESENT: Mr.Pritam Saini Advocate and
Mr.Rajnish Narula,Advocate
for the appellant.

Mr.SS Goripuria, Senior Deputy Advocate General, Haryana.

JUDGMENT

The present FAO arises out of the award dated 30-7-1988 rendered by Mr.Suresh Chand Jain, Motor Accident Claims Tribunal, Karnal vide which a claim petition of the appellant was accepted. An amount of Rs.37,000/- was awarded to the claimant along with interest @ 12% per

annum from the filing of the petition till realization with respect to the injuries she sustained in the accident.

In brief, the facts of the case are that on 6-12-1986 Madhu Bala-petitioner had suffered injuries at Bus Stand, Panipat, while she was trying to get into the bus No.HRQ 4462 owned by respondent No.2. Through this petition, the claimant sought compensation of Rs.1,50,000/-

It is the case of the petitioner that she is the resident of Nagpur where she along with her husband had been residing right from the date of marriage. From the loins of her husband, she had given birth to three children. In the month of December, 1986, the entire family had come to Panipat and on 6-12-1986, they were to come to Karnal to meet some of their relatives, they wanted to board bus No.HRQ 4462, which then standing at the booth. Sham Sunder respondent No.3 was the driver of the bus. Respondent No.3 started his bus without giving any horn or receiving any signal from the Conductor. Madhu Bala, who was in the process of boarding the bus fell down on the ground and suffered injuries. In this accident, she had suffered serious injurious on her left hand and right leg. She was shifted to Civil Hospital, Panipat. Due to the multiple injuries suffered by her, she suffered permanent disability. She had spent a sum of Rs.20,000/- on her treatment special diet etc.

Upon notice, respondents No.1 and 2 filed a joint written statement and controverted the allegations of the petitioner.

It was further admitted that respondent No.3 was the driver of the bus at the relevant time. The bus was over loaded with passengers. When the conductor of the bus blew the whistle, it had covered only 8-10 yards at a very slow speed. When the petitioner tried to board the

moving bus, she fell down on the ground and sustained the injuries.

Respondent No.3 did not file any separate written statement and adopted the written statement filed by respondents No.1 and 2.

On the pleadings of the parties, the following issues were framed:

> 1.”Whether Madhu Bala suffered any injury in an accident with bus No.HRQ 4462 due to the rash and negligent driving by respondent No.3?OPP
>
> 2.Whether the petitioner is entitled to recover any compensation amount, if so how much and from whom?OPP
>
> 3.Relief.”

Both the parties adduced their evidence in support of their contentions raised in the pleadings.

The finding on issue No.1 was returned in favour of the claimant holding that respondent No.3 was responsible for causing this accident due to rash and negligent driving.

While disposing issue No.2, the learned Tribunal assessed the compensation of Rs.37,000/- in all to be paid to her which includes pain and suffering, permanent disability and medical treatment special diet etc.

According to the learned counsel for the appellant, the amount of compensation awarded by the Tribunal under this issue is on the lower side and the same needs to be modified in this appeal.

To support his contention, he referred to the statement of PW3-Dr.PN Gandhi, MS Orthopaedics Surgeon, Panipat, who proved that soon after the accident he noticed fracture of shaft of femur right side, which has united and a kuntcher nailing was done by an operation. In the x-rays of the fore-arm, the fracture has united and a square nail has been inserted in the ulna by an operation. For these two x-rays films, the petitioner was charged Rs.80/- and Rs.20,000/- for medical check up. It has also come in the statement of PW3-Dr.PN Ghandhi that the petitioner has suffered the disability to the extent of 30% as per Certificate Ex.PB. It has further come that there is shortening of the leg, which cannot be restored to its normal position but the rotation can be corrected by another operation. Likewise with the second operation of her left arm and removal of the nail movements of her left elbow may improve to some extent but to what extent it cannot be said or forecast at this stage. Hence, the claimant was entitled to higher compensation.

Though the disability certificate Ex.PB was issued by a private surgeon i.e. of Gandhi Hospital and was not the opinion of the Board presided over by Civil Surgeon of the Civil Hospital, Panipat, thus this certificate Ex.PB is not very much helpful to the appellant. Haryana Government has constituted a Medical Board in each District, presided over by Civil Surgeon besides two other doctors to evaluate the disability of the patient. The claimant in the instant case has not been examined by the Medical Board of Civil Hospital, Panipat. However, at the same time, no evidence has been led by the respondent to challenge the authenticity of the certificate Ex.PB issued by Dr.PN Gandhi, doctor of a private hospital.

Therefore, keeping in view the facts and circumstances

appearing in the case, the amount of compensation awarded by the Tribunal appears to be on the lower side and the same is enhanced from Rs.37,000/- to Rs.50,000/- on all counts, which shall be paid by respondents No.1 to 3 jointly and severally.

In the net result, this petition is accepted and the award of the Tribunal is modified on the terms indicated above.

The respondents No.1 to 3 are directed to pay the enhanced amount of the award made by this Court within three months from today, failing which the claimant would be entitled to interest 6% per annum from the date of enhanced amount made by this Court till realization.

(R S MADAN)
JUDGE

July 12, 2006
jt